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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: LIN 01 177 51605

Office: Nebraska Service Center Date:

JUN 24 2002

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(a)

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a sheep herder service which seeks to employ the beneficiary as a sheep herder for an unspecified period. The director denied the petition because he determined that the petitioner had not established that the beneficiary meets the special requirements of the temporary labor certification.

On appeal, the petitioner argues that the beneficiary does meet the requirements of the labor certification.

Section 101(a)(15)(H)(ii) defines an H-2A nonimmigrant as:

... an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services ... of a temporary or seasonal nature ...

8 C.F.R. 214.2(h)(5)(i)(A) requires that a petition for temporary employment for an agricultural worker in the United States be filed with a single agricultural labor certification. Pursuant to 8 C.F.R. 214.2(h)(5)(v)(B):

A petition must be filed with evidence that at the required time the beneficiary met the certification's minimum employment and job training requirements. Initial evidence must be in the form of the past employer's detailed statement or actual employment documents, such as company payroll or tax records. Alternately, a petitioner must show that such evidence cannot be obtained, and submit affidavits from people who worked with the beneficiary that demonstrate the claimed employment.

The petitioner stated the following on the labor certification form (ETA 750):

The shepherd must have previous training herding sheep. He must be adequately [sic] to be alone for a long period of time only with the sheep in the mountains. This has to be a special kind of person [sic] habituated to silence to take care of the sheeps [sic] ....

The petitioner was requested to submit evidence that the beneficiary meets the stated minimum requirement. The petitioner has not provided such evidence to date. In view of the foregoing, it is concluded that the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.